

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Commercial Spectrum)	)	WT Docket No. 05-211
Enhancement Act and Modernization of the	)	
Commission's Competitive Bidding Rules and	)	
Procedures	)	

**COMMENTS OF US WIREFREE**

US Wirefree ("USW"), by its attorneys, hereby comments in the captioned proceeding.

USW is a small business positioning itself to introduce new broadband wireless solutions that address the need for low-cost and readily available broadband connectivity. As such, it is keenly interested in FCC rules and policies governing the auctioning of spectrum for broadband wireless services such as Advanced Wireless Services ("AWS"), especially when it comes to the participation of designated entities (DEs) including small businesses.

USW applauds the Commission's efforts to determine whether additional safeguards are necessary to ensure that auction bidding credits are awarded only to DEs. USW generally supports the Council Tree proposals to prohibit the availability of bidding credits where an otherwise qualified DE has a "material relationship" with a large incumbent wireless service provider. USW agrees that without such a restriction spectrum rights will further be concentrated among the large incumbents.

*Defining “Material Relationship.”* USW supports the Council Tree proposal that a “material relationship” should be found to exist if a large incumbent wireless service provider: (1) has provided a material portion of the total capitalization of the applicant (*i.e.*, equity plus debt) or (2) has any material operational arrangement with the applicant (such as management, joint marketing, trademark, or other arrangements) or other material financial arrangement relating to the incumbent and applicant. If such a relationship exists, DE bidding credits should be withheld from the applicant even if it would otherwise qualify as a DE.

However, USW opposes including within the definition of “material relationships” those relationships between an otherwise qualified DE and *any* entity with significant interests in communications services. The Commission has recognized the substantial consolidation that has occurred in the wireless industry as well as the benefits of facilities-based competition. It therefore would be appropriate to allow DEs to obtain backing from communications services companies that are not providers of wireless services (e.g., equipment manufacturers) in order to construct new broadband networks that compete with those of incumbents.

USW favors a bright line for defining the permissible level of financial participation of an incumbent wireless service provider in a DE. Considering the wide range of service areas that will be licensed in the AWS auction and the varying amounts of capital that will be required to secure different licenses, even one percent (1%) of a DE’s capitalization could be “material” in terms of impacting

particular auction outcomes. Accordingly, and to tightly close the loophole on large companies using small ones as fronts in the auctions, the permissible level of financial participation of a large incumbent wireless service provider in a DE should be less than 1%.

*Defining Gross Revenues.* For consistency and to avoid confusion, USW supports using the existing definition of “gross revenues” in Section 1.2110 (n) of the Commission’s rules for establishing the benchmark that limits the size of an incumbent wireless service provider that has a material relationship with a DE using spectrum auction bidding credits. Considering that a small business is defined as one having no more than \$40 million in average annual gross revenues over the preceding three years in order to qualify for a 15% bidding credit, Council Tree’s proposed benchmark of \$5 billion in average annual gross revenues for incumbent wireless providers strikes USW as far too high, potentially leading to a \$40 million small business bidding against another “small business” that has the support of a multi-billion dollar incumbent. USW suggests that a more appropriate benchmark should be no more than ten times the size of a \$40 million small business, thus setting the gross revenue benchmark at \$400 million. Again, not all entities with significant interests in communications services should be subject to this restriction, only incumbent wireless providers.

*Significant Geographic Overlap.* Using “geographic overlap” as an element in further restricting the availability of DE benefits is unnecessary for achieving the Commission’s goals in this proceeding. It would add another level of complexity to

DE-eligibility determinations and potentially be a source of abuse or confusion involving the proper calculation of overlap areas. USW thus supports excluding this element from the new restrictions.

*Unjust Enrichment.* USW supports the Council Tree proposal that the Commission should impose a reimbursement obligation on a DE licensee that acquired its license with a bidding credit and, during the first five years of the license term, makes a change in its “material relationships” or seeks to assign or transfer the license to an entity that would result in its loss of its eligibility for the bidding credit. An unjust enrichment payment should not be required, however, in the case of “natural growth” of the revenues attributed to an incumbent carrier above the established benchmark.

*Pending AWS Auction.* At the same time DEs are participating in this rulemaking to improve their chances in the AWS auction scheduled to begin on June 29, 2006, they must attempt to raise funds for that auction. At this stage a DE does not even know whether all entities with significant interests in communications services will be covered by the new rules that are being contemplated in this proceeding. If a DE waits until the new rules are adopted there likely will be too little time for it to forge the relationships it needs to be competitive in the auction. USW therefore suggests that the Commission consider postponing the AWS auction and holding it no earlier than 180 days after the effective date of the new rules.

Respectfully submitted,

US WIREFREE

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